

Law Offices of Gregory Messer
Counsel for Ervin Johnson
26 Court Street, Suite 2400
Brooklyn, NY 11242
(718) 858-1474
Gregory Messer, Esq.

Hearing Date: July 18, 2019
Hearing Time: 11:00 a.m.

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF NEW YORK

-----X

In re:

Chapter 11

E & J MACON, ET AL

Case No: 18-40321 (NHL)

Debtor.

-----X

NOTICE OF MOTION TO WITHDRAW AS ATTORNEY FOR ERVIN JOHNSON

PLEASE TAKE NOTICE that, upon the Affirmation of Gregory Messer dated the 18th day of June, 2019, a motion will be made to this Court for an order, pursuant to Section 327 of the Bankruptcy Code, relieving the Law Offices of Gregory M. Messer as counsel for Ervin Johnson, together with such other, further, and different relief as this court deems just, proper, and equitable.

Date and Time: July 18, 2019 at 11:00 a.m.
Bankruptcy Judge: Honorable Nancy Hershey Lord
Courthouse: United States Bankruptcy Court
Eastern District of N.Y.
Courtroom 3577
271-C Cadman Plaza East
Brooklyn, NY 11201

PLEASE TAKE FURTHER NOTICE that objections, if any, to the motion must be made in writing, must conform to the Federal Rules of Bankruptcy Procedure and must be served so as to be actually received no later than 4:00 p.m. on July 11, 2019, on the Law Offices of Gregory Messer, 26 Court Street Suite 2400, Brooklyn, NY 11242.

PLEASE TAKE FURTHER NOTICE that failure to respond may result in the Court granting the relief requested in the motion without further notice or hearing.

Dated: Brooklyn, New York
June 18, 2019

Respectfully submitted,

Law Offices of Gregory Messer
Attorneys for Ervin Johnson

/s/ Gregory Messer

By:

Gregory Messer, Esq.
26 Court Street, Suite 2400
Brooklyn, New York 11242
Tel: (718) 858-1474
Fax: (718) 797-5360

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MOTION TO BE RELIEVED AS ATTORNEY FOR ERVIN JOHNSON

The Law Offices of Gregory Messer by this motion and affirmation of Gregory Messer, an attorney duly admitted to practice before this Court, seeks to be relieved as counsel to Ervin Johnson in the above-referenced matter and affirms under penalty of perjury as follows:

1. I am a member of the Law Offices of Gregory M. Messer, the current attorneys for Ervin Johnson. I submit this affirmation in support of this motion by Law Offices of Gregory M. Messer (the “Firm”) for an Order pursuant to Local Rule 2090-1(d) relieving the Firm as counsel to Ervin Johnson.

2. E & J Macon filed a petition under Chapter 11 of the Bankruptcy Code on January 19, 2018 (the “Commencement Date”), the Debtor filed a voluntary petition for reorganization under Chapter 11 of Title 11 of the United States Code (the “Bankruptcy Code”). The Debtor has continued in the management of its business and operation of its affairs and properties as a debtor and debtor-in-possession pursuant to sections 1107 and 1108 of the Bankruptcy Code. No trustee or examiner has been appointed, and no official committee of unsecured creditors has

been formed.

3. The Debtor has confirmed a plan of reorganization. It has sold the three properties that were owned and the sales have been confirmed by this court.

4. While Mr. Johnson and I retain a cordial relationship he has become unreceptive to my advice and has not cooperated with the firm.

5. Mr. Johnson seeks legal advice of other attorneys on a regular basis as well as real estate investors and other individuals.

6. Mr. Johnson has advised me that he has retained other counsel but I have been unable to obtain a consent to change attorney. Our relationship has eroded to the point that it is necessary for me to ask to be relieved as counsel to Mr. Johnson.

7. Accordingly this firm is filing this instant motion to withdraw from this case.

8. Local Rule 2090-1 (d) of the Local Rules of the United States Bankruptcy Court for the Eastern District of New York provides as follows:

(d) Withdrawal or Substitution of Attorneys of Record.

An attorney who has been authorized to be retained or has appeared as the attorney of record for any party in any case or adversary proceeding may not withdraw or be relieved or displaced except by order after notice to the party represented, any adversaries (if applicable), the United States trustee and the trustee. An application for such an order shall include a showing by affidavit of satisfactory reasons for withdrawal or displacement and the posture of the case, including the status of any pending matters.

9. New York Rule of Professional Conduct 1.16 (c) provides in pertinent part that a lawyer may withdraw from employment when:

(4) the client insists on taking action with which the lawyer has a fundamental disagreement;

(5) the client deliberately disregards an agreement or obligation to the lawyer as to expenses fees;

(7) the client fails to cooperate in the representation or otherwise renders the representation unreasonably difficult for the lawyer to carry out employment effectively;

10. “Irreconcilable differences” can also be “cause” to relieve counsel from representation. *Forchelli, Curto, Deegan, Schwartz, Mineo, Cohn & Terrana, LLP v. Hirsch*, 2010 WL 2667198 *1 (E.D.N.Y.).

11. This Firm is seeking to withdraw as counsel to the Debtor as the Debtor continuously insisted on this Firm taking actions to which the Firm had a fundamental disagreement and did not agree with this Firm's advice. Additionally, voluntary withdrawal is appropriate under New York Rule of Professional Conduct 1.16(c).

12. The above stated factors and other undisclosed factors have caused irreconcilable differences that rise to the level of seeking voluntary withdrawal and possibly mandatory withdrawal under the New York Rules of Professional Conduct, and this Firm does not want to take any further action on behalf of this Debtor, nor can it adequately represent the Debtor due to such irreconcilable differences.

13. This firm is seeking to withdraw as counsel to Mr. Johnson as Mr. Johnson and his entourage have insisted on the Firm taking action that the Firm believed to be improper.

14. The above stated factors and other undisclosed factors have caused irreconcilable differences that rise to a level of seeking voluntary withdrawal under the New York Rules of Professional Conduct and this firm does not want to take any further action on behalf of Ervin Johnson nor can it adequately represent Mr. Johnson due to irreconcilable differences.

15. Accordingly, because of these irreconcilable differences and Mr. Johnson's recent actions this Firm seeks to be immediately relieved as counsel for Mr. Johnson as soon as a hearing can be heard.

WHEREFORE, your affirmant respectfully requests on behalf of the Firm that this Court enter an Order relieving the Firm as attorneys for the Debtor pursuant to Local Rule 2090-1(d) together with such other, further and different relief as this Court deems just, proper and equitable.

Dated: Brooklyn, New York
June 18, 2019

Respectfully submitted,

Law Offices of Gregory Messer
Attorneys for Ervin Johnson

By: /s/ **Gregory Messer**
Gregory Messer, Esq.
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